

Thomas Kempe, and Page Hockett, Plaintiffs, as Bail for James Vavasor, in a Writ of Error, brought upon a Judgment given against them in the Queen's Bench, in a Scire Facias upon their Recognizance.

Randolph Tutte, Defendant.

The Defendant's C A S E.

In September, 1672.

THe Defendant Tutte, being the Surviving Executor of Thomas Meacham, deceased, for the Benefit of Thomas Meacham, Son of the Testator, an **Infant**, and there appearing plainly, by the Testator's Books, to be justly due to him at the Time of his Death, from the said Vavasor, **Ninety five Pounds, eight Shillings, and seven Pence**, for Goods by him sold, and Moneys lent to and laid out for the said Vavasor, he the now Defendant Tutte having sent several times to desire the said Vavasor to pay the said Debt, and having delivered to him a Bill of Particulars of such his Demands, but he refusing to pay the same, the said Defendant Tutte, commenced his Action in the Court of Common-Pleas at Westminster against the said Vavasor, and laid it in the County of Sussex, where the said Tutte and Vavasor both lived, with intent to try the same there.

Easter-Term following

Trinity-Term following

But Vavasor not pleading in time, the Defendant Tutte regularly signed a Judgment against him; but upon several Motions in Court, made by the said Vavasor's Council, to set aside the Judgment, they on his behalf offered, that he should put in good Bail, and immediately plead to Issue, and enter into a Rule of Court, not to surrender himself in discharge thereof, and try the Cause in London the next Term, with which Offer the now Defendant complied, and the Court accordingly discharged that Judgment, and directed a Tryal the Term following.

Michaelmas-Term following

The Cause came to Tryal in London before the Lord Chief Justice Trevor, at the Sitting after the Term; but Vavasor having pleaded the Statute of Limitations, the said Defendant Tutte obtained a Verdict but for **Forty two Pounds**, part of the said **Ninety five Pounds, eight Shillings, and seven Pence**, all the rest being struck off by the said Plea.

Hilary-Term, 1674.

Judgment on the said Verdict was entred upon Record, for the said Damages given by the Jury, which, with the Costs allowed by the Court, amounted but to **Sixty and eight Pounds**.

The same Term a Writ of Error in the Queen's Bench.

Hereupon the said Vavasor brought a Writ of Error, returnable in the Queen's Bench; to which Writ of Error the now Plaintiffs, Thomas Kempe, and Page Hockett, became Bail, by entering into the Recognizance, upon which this Scire Facias was afterwards brought.

Hilary-Term, 1705

The said Judgment for the said Sum of **Sixty and eight pounds**, was affirmed with **Fourteen pounds and ten Shillings** increase of Costs, which in the whole amounted unto **Eighty two pounds and ten Shillings**.

The same Term a Bill in Chancery.

And pending the said Writ of Error, Vavasor preferred his Bill in Chancery, to be relieved against the said Judgment, and got an Injunction of Course, till the Defendant Tutte had answered: Upon putting in of which Answer, the Matters therein being opened before the Master of the Rolls, the said Injunction was dissolved.

24 May, 1706, Injunction dissolved.

Trinity-Term, 1706. 1st Writ of Error returnable in Parliament.

The said Vavasor brought a Writ of Error on the said Judgment, returnable in Parliament, and for want of his transcribing the Record, the said Writ of Error was in Michaelmas-Term following **Non-pros'd**.

Mich. Vacat. 1706. Scire Facias against the now Plaintiffs.

The said Vavasor being then difficult to be taken on the said Judgment, the now Defendant Tutte sued forth a Writ of Scire facias against the now Plaintiffs Thomas Kempe and Page Hockett, as Bail for the said Vavasor in the Queen's Bench, upon their said Recognizance, upon which the Sheriff gave them Notice; whereupon they appeared, and pleaded, That there was no such Record: But the Defendant producing the Record, Judgment against them was given by the said Court, and entred upon Record, with Six Pounds ten Shillings Costs; Total, **Eighty Nine pounds**.

Hilary-Term following.

Easter-Term, 1707.

The same Term

The said Vavasor upon Motion in Chancery obtained an Order to revive the said Injunction.

2d Writ of Error in Parliament.

But the said Order upon hearing Parties on both sides, was discharged, and the Injunction absolutely dissolved.

Trinity-Term following

Hereupon the said Vavasor brought another Writ of Error in Parliament, as well in behalf of himself, as for the now Plaintiffs Thomas Kempe, and Page Hockett his Bail.

And divers Motions were made by the now Defendant Tutte, to quash the said second Writ of Error: Whereupon the Court, upon hearing Council on both sides, adjudged the said second Writ of Error nought, and quashed the same.

Michas-Term, 1707.

The said Vavasor again in the Court of Chancery moved before the Lord-Chancellor, to revive the said Injunction, but upon hearing Council on both sides, the same was denied.

Third Writ of Error in Parliament.

And yet for further Vexation and Delay, this Third Writ of Error is now brought in Parliament. It is therefore humbly hoped, That the Judgment shall be affirmed for the now Defendant Tutte, with good Costs for the great Trouble and Expences he hath sustained and been put unto by so many Writs of Error, and the rather for that the now Defendant Tutte is only a Surviving Executor in Trust for the Benefit and Support of a poor Infant.

Rob. Raymond.